TENTATIVE RULINGS for CIVIL LAW and MOTION
March 18, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **French v. Payless Car Sales**
Case No. CV CV 09-725

Hearing Date: **March 18, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiffs Anthony French's and Shirley Edgbert's unopposed motions to compel defendant Payless Car Sales of Woodland to respond to form interrogatories, special interrogatories, and demands for inspection are **GRANTED**. (Code Civ. Proc., §§ 2030.290 and 2031.300.) Defendant shall serve verified answers to the above-listed discovery requests (together with any responsive documents), without objection, by March 26, 2010. (Code Civ. Proc., §§ 2030.290, subd. (c), 2031.300, subd. (c).)

The unopposed motion to have the truth of the matters stated in the plaintiffs' requests for admission to the defendant deemed admitted is **GRANTED**. (Code Civ. Proc., § 2033.280, subds. (b) and (c).)

The request for monetary sanctions is **DENIED**. (Code Civ. Proc., § 2023.040.) Plaintiffs did not state who they seek sanctions against in their notice of motion.

Plaintiff shall serve the defendant with a copy of this ruling by no later than March 24, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **McClelland v. Chaurasia**
Case No. CV CV 08-1868

Hearing Date: **March 18, 2010** **Department Fifteen** **9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to Wednesday, May 5, 2010, at 9:00 a.m. in Department Fifteen. Defendants shall serve a copy of this order on the plaintiffs by no later than March 22, 2010. **By no later than April 9, 2010**, the parties shall file and serve

supplemental opening briefs, not to exceed 15 pages in length, on the issues identified below only. **By no later than April 19, 2010**, the parties shall file briefs, not to exceed 10 pages in length, responding to the opposing side's supplemental opening brief.

The Court will not consider late-filed papers. All contentions must be supported by citation to relevant legal authority.

(1) Although the filing of a bankruptcy petition by a debtor-defendant does not generally stay the case as to a non-debtor co-defendant, the lawsuit against the co-defendant may not proceed in the absence of the debtor-defendant if the debtor-defendant is an indispensable party to the litigation. (Kathleen P. March, Esq. and Judge Alan M. Ahart, Calif. Practice Guide: Bankruptcy (The Rutter Group 2009) ¶¶ 8:215-8:216.)

Is Aegis Lending Corporation ("ALC") and/or Aegis Mortgage Corporation ("AMC") an indispensible or necessary party to the plaintiff's action against Ocwen Loan Servicing, LLC ("Ocwen") and U.S. Bank National Association ("U.S. Bank"), within the meaning of Federal Rules of Civil Procedure 19 and/or Code of Civil Procedure section 389, such that the action against Ocwen and U.S. Bank should not proceed in ALC and/or AMC's absence? In particular, please address the issue of whether proceeding with the action against Ocwen and U.S. Bank in ALC and/or AMC's absence may, as a practical matter, impair or impede ALC and/or AMC's ability to protect its/their interests.

(2) Do unusual circumstances in this case justify extending the bankruptcy stay to the plaintiffs' action against Ocwen and U.S. Bank? (*See* Kathleen P. March, Esq. and Judge Alan M. Ahart, Calif. Practice Guide: Bankruptcy (The Rutter Group 2009) ¶ 8:217.)

(3) Plaintiffs contend that the loan they obtained from ALC in 2005 is "illegal" for reasons including fraud and failure to provide the plaintiffs with "required pre-loan information". Plaintiffs charge Ocwen with wrongdoing based in part on Ocwen's foreclosing on the ALC loan after the plaintiffs had notified Ocwen that the ALC loan is "illegal" and that the plaintiffs had rescinded the ACL loan contract. (Complaint page 6, lines 7-17.) Under the facts alleged in the complaint, in deciding Ocwen's liability, the Court must first determine whether ALC took "unconscionable advantage" of the plaintiffs when ALC made the 2005 loan. (Civ. Code, §§ 1695.13 and 1695.14.)

a. If the Court proceeds with the action against Ocwen and U.S. Bank in ALC and/or AMC's absence, would a finding that ALC took "unconscionable advantage" of the plaintiffs when ALC made the 2005 loan be binding on ALC and/or AMC?

b. If the Court proceeds with the action against Ocwen and U.S. Bank in ALC and/or AMC's absence, would a finding that ALC took "unconscionable

advantage" of the plaintiffs when ALC made the 2005 loan otherwise adversely affect the interests of ALC and/or AMC in this lawsuit?

c. Is there a danger of inconsistent results or findings if this Court proceeds with the action against Ocwen and U.S. Bank in ALC and/or AMC's absence?

d. May the Court stay the plaintiffs' action against Ocwen and U.S. Bank for equitable and/or convenience reasons?

(4) Plaintiffs assert at pages 7-11 of their opposition papers that the issue of whether the 2005 ALC loan contract is unlawful is currently before the United States Bankruptcy Court for the District of Delaware. Defendants shall state whether they dispute this fact and the basis of any dispute.

(5) If the issue of whether the 2005 ALC loan contract is unlawful is before the United States Bankruptcy Court, should this Court exercise its discretion to stay this action? (*See* 2 Witkin, Calif. Procedure (5th ed. 2008) Jurisdiction, § 436, pp. 1089-1091.) If no, state facts supporting a decision to not stay this action.

(6) If the United States Bankruptcy Court or the bankruptcy trustee has taken any action concerning or affecting the loan or the real property that is the subject of this lawsuit or Yolo Superior Court case no. CV CV 08-1868, describe such action(s) in detail and submit evidence of such action(s).

If the Court finds that the plaintiffs' action against Ocwen and U.S. Bank may proceed in ALC and AMC's absence, the Court will permit Ocwen and U.S. Bank to file a supplemental reply brief to respond to the plaintiffs' late-filed, 47-page opposition brief.

In the future, the plaintiffs must comply with the requirements of the Code of Civil Procedure and the California Rules of Court, including those provisions governing deadlines for the filing of papers (Code Civ. Proc., § 1005, subd. (b)) and the length of opening and responding memoranda (Cal. Rules of Court, rule 3.1113(d)). The Court may not consider papers filed in violation of these rules.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case:	**Ramos Oil v. Dilkey** **Case No. CV G 09-1280**		
Hearing Date:	**March 18, 2010**	**Department Fifteen**	**9:00 a.m.**

Defendant Michael Dilkey's motion to set aside the default judgment under Code of Civil Procedure sections 473 and 473.5 is **DENIED**. Defendant's motion is untimely, fails to attach

a copy of defendant's proposed responsive pleading, and fails to submit competent evidence in support thereof.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Rosas v. Leer Truck Accessory**
Case No. CV CV 09-2800
Hearing Date: **March 18, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's demurrer to the complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., §430.10, subd. (e).) Plaintiff fails to state sufficient facts to establish a cause of action for disability discrimination. Plaintiff does not allege facts that would show that the injury to his lung was a "medical condition" or "physical disability" as defined under the Fair Employment and Housing Act. (Gov. Code, § 12926(k)(1)(4); *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 255

Defendant's motion to strike is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., §436; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159.) Plaintiff's allegations in support of the claim for punitive damages are conclusory.

Plaintiff shall file an amended complaint by **March 30, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Zochlinski v. Regents**
Case No. CV PT 07-9
Hearing Date: **March 18, 2010** **Department Fifteen** **9:00 a.m.**

Petitioners' motion to add signatures to filed documents (filed on March 15, 2010): This motion is **GRANTED**.

Petitioners' motion to file documents late (filed on January 11, 2010): In this motion, the petitioners ask the Court to consider their late-filed second amended writ petition. On September 14, 2009, this Court issued an order that, among other things, granted the petitioners' motion for leave to file a second amended writ petition. The Court ordered the petitioners to file their second amended writ petition by October 15, 2009, and warned the petitioners that the Court was not inclined to grant any request for a continuance of this deadline. This order followed a prior warning about requests for continuances. Petitioners did not heed the Court's warnings.

On October 19, 2009, finding no good cause for a continuance, the Court denied Howard Zochlinski's *ex parte* application to extend the time for filing a second amended writ petition. Petitioners did not file a writ to challenge the October 19, 2009, order. Petitioners now reargue the *ex parte* application that was decided on October 19, 2009. Petitioners' motion is untimely and is **DENIED**. The second amended writ petition filed on October 23, 2009, is **STRICKEN**. However, the Court considered the papers the petitioners filed on January 11, 2010, and March, 2010, where such papers relate to the only remaining claim.

Petitioners' renewed motion for contempt (filed on January 11, 2010): This motion is **DENIED**. The renewed motion was filed beyond the 10-day period for filing a motion for reconsideration. (Code Civ. Proc., § 1008, subd. (a).) It has not been shown that new or different facts, circumstances, or law require reconsideration of the September 14, 2009, order. Petitioners have not shown that either letter attached to the renewed motion is a "new" fact nor why such letters could not have been presented earlier.

Respondents' fifth request for judicial notice (filed on February 10, 2010): This request is **DENIED**. The documents attached to this request are offered in support of the respondents' opposition to petition for Writ of Mandate B in the second amended writ petition. As stated above, the Court does not consider the second amended writ petition.

Howard Zochlinski's third request for judicial notice (filed on March 1, 2010): This request is **DENIED**. Donald Curry's April 7, 1993, disqualification letter and Rosemary Kraft's April 19, 1997, letter to Mr. Zochlinski are already part of the administrative record. (Pages 61-63 and 68 of the administrative record lodged on May 22, 2009 (hereafter "AR [page number]").) The documents marked 3 through 5 are not relevant to the petition at bar. Additionally, the document marked 4 has not been properly authenticated.

Respondents' evidentiary objections to the Declaration of Peter Rodman (filed on February 10, 2010): Objection 2 to paragraphs 5-25, 27-32, 34-37, 39, and 56-59 is **SUSTAINED**. Objection 3 to paragraphs 8 (last sentence only), 9-12, 14 (last four sentences only), 15, 23, 27 (last four sentences only), 28 (second sentence only), 29, 30 (lines 9-13), 37.c, 37.d, 44 (last two sentences only), 56 (third sentence only), and 58 (second sentence only) is **SUSTAINED**. Objection 4 to paragraphs 9, 10, 14 (last four sentences only), 16 (second sentence only), 18 (last sentence only), 19, 24, 26 (fifth and seventh sentences only), 27, 28 (second and third sentences only), 34-36, 39 (second, third and fourth sentences only), and 50 (last three sentences only) is **SUSTAINED**. Objection 5 to paragraphs 10, 15, 28, and 30-33 is **SUSTAINED**. Objection 6 to paragraphs 11, 17, 21, 25, 26, 30, 32, 37, 53, 55, and 57-59 is **SUSTAINED**. Objection 7 to paragraphs 30, 38 (last two sentences), and 41 is **SUSTAINED**. All other objections to this declaration are **OVERRULED**.

Respondents' evidentiary objections to the Declaration of Mark Graham (filed on February 10, 2010): Objections 2 and 5 are **SUSTAINED** in their entirety. Objection 3 to paragraphs 6, 7, 8 (first sentence only), 11, and 14 is **SUSTAINED**. Objection 4 to paragraphs 6-8 and 11-14 is **SUSTAINED**. All other evidentiary objections to this declaration are **OVERRULED**.

Petitioners' evidentiary objections to the Declaration of Frank Wada (filed on March 15, 2010): The Court does not consider this declaration because it relates only to the issue of holds allegedly placed on Mr. Zochlinski's records, which is the subject of a new claim in the second amended writ petition. Therefore, it is not necessary to rule on the evidentiary objections to Mr. Wada's declaration.

Petition for Writ of Mandate A in the first amended writ petition: There is a dispute about whether the Dean of Graduate Studies is bound by the Representative Assembly's February 28, 2005, decision to reinstate Mr. Zochlinski as a graduate student. Petitioners characterize the Representative Assembly's decision as a decision for reinstatement. Petitioners contend that the Representative Assembly has authority over admissions, readmissions, and reinstatement. Respondents contend that the Representative Assembly's February 28, 2005, decision is a decision to reverse the Dean's 1993 disqualification decision and that, under Senate Regulation 904, the Dean has final authority over a disqualification decision.

The record supports a finding that what the Representative Assembly actually did in its February 28, 2005, decision is to reverse the Dean of Graduate Studies' April 7, 1993, disqualification decision. The first paragraph of Mr. Zochlinski's February 12, 2004, petition states, "I am petitioning the Representative Assembly to overturn my 1993 disqualification from graduate study in genetics and the subsequent denial of my appeal." (AR 5.) There is no evidence that, in 2004, Mr. Zochlinski had submitted an application for re-admission for the Representative Assembly's consideration. Contrary to the petitioners' contention, there is no evidence that the Representative Assembly considered Mr. Zochlinski's qualification for re-admission to a graduate program. Instead, the Representative Assembly recognized that Mr. Zochlinski's dissertation was "substandard" but debated whether Mr. Zochlinski was given an "appropriate opportunity to complete his work in light of the difficulties that he faced" in 1993. (AR 43.) The Representative Assembly's conclusion that Mr. Zochlinski was not given an adequate opportunity to complete his dissertation clearly contradicts the Dean's 1993 finding that Mr. Zochlinski had been given "every reasonable possibility to submit an acceptable dissertation" and that Mr. Zochlinski's arrest could not have affected his ability to produce a dissertation from September, 1991 to November, 1992. (AR 63.)

In apparent conflict with the language of Davis Bylaw 80.B.18, Senate Regulation 904 of the systemwide Academic Senate provides that disqualification of graduate students is at the discretion of the dean of the graduate division concerned.

The UC Academic Senate Committee on Rules and Jurisdiction ("UCRJ") is responsible for interpreting the Code of the Academic Senate, which includes the standing orders of the Regents, systemwide bylaws and regulations, and division bylaws, regulations and legislative rulings. (Senate Bylaws 80 and 206.) The UCRJ ruled that Senate Regulation 904 is consistent with the Code of the Academic Senate, thereby disagreeing with the opinion of the Davis Division Committee on Elections, Rules and Jurisdiction ("CERJ") that Graduate Council, not the Dean of Graduate Studies, has the authority to decide appeals of disqualification decisions. (AR 16-18, Exhibit D to Petitioner's response filed on July 27, 2007; Exhibit 5 to Respondents'

request for judicial notice filed on March 22, 2007; page 2 of Exhibit 4 to the initial writ petition.) There is no evidence that the Davis Division sought a variance of Senate Regulation 904 in relation to Dean Curry's 1993 disqualification decision.

The UCRJ's ruling is consistent with the maxim that the more specific regulation – i.e., Senate Regulation 904 - prevails over the more general regulation – i.e., Senate Bylaws 315.C and Davis Bylaw 160.9. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1208.)

It has not been established that the Representative Assembly had the authority to reverse the Dean's disqualification decision. A reading of the bylaws, Senate Regulation 904 and Legislative Ruling 6.06 that would permit the Representative Assembly to reverse the Dean's disqualification decision would be contrary to the express language in Senate Regulation 904.

As framed by the first amended writ petition and Petitioners' May 29, 2009, supporting memorandum of points and authorities, the issue before the Court is a narrow one: whether the respondents acted in an arbitrary or capricious manner when they decided not to adopt the Representative Assembly's February 28, 2005, decision to reinstate Zochlinski. Interim Provost/Executive Vice Chancellor Barbara Horwitz made the final decision to reject the Representative Assembly's reinstatement decision. (AR 19-24.) Her action is subject to review where there has been a manifest abuse of discretion or where her action was arbitrary, capricious or unlawful. (*Wong v. Regents of the Univ. of Calif.* (1971) 15 Cal.App.3d 823, 830; *Banks v. Dominican College* (1995) 35 Cal.App.4th 1545, 1551.) Petitioners bear the heavy burden of showing arbitrariness, capriciousness or bad faith. (*Wong v. Regents of the Univ. of Calif., supra,* 15 Cal.App.3d at 830; *Banks v. Dominican College, supra,* 35 Cal.App.4th at 1552.) Petitioners must show that Ms. Horwitz' decision was without any "discernable rational basis." (*Banks v. Dominican College*, *supra*, 35 Cal.App.4th at 1552.) "In determining whether an abuse of discretion has occurred, a court may not substitute its judgment for that of the administrative board [citation], and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld [citation]." (*Manjares v. Newton* (1966) 64 Cal.2d 365, 371.)

As discussed above, consistent with the UCRJ's interpretation of the Code of Academic Senate, the Dean of Graduate Studies had the discretion to reject the Representative Assembly's February 28, 2005, recommendation. Acting as the Dean's designee, Ms. Horwitz reviewed Mr. Zochlinski's February 12, 2004, petition, the materials submitted to the Representative Assembly in relation to such petition, the reports from the Special Committee on Student Petitions, Chair Daniel Simmons' August 4, 2005, letter, and documents relating to Dean Curry's 1993 disqualification decision. (AR 19-76.) Ms. Horwitz considered whether Mr. Zochlinski's 1993 disqualification was academically sound, whether Mr. Zochlinski was given an "appropriate opportunity" to complete his dissertation, and whether extenuating circumstances were considered. (AR 21, fn. 2.) She concluded that the record showed that Mr. Zochlinski was given adequate opportunities to complete his dissertation and his "personal difficulties" were considered when the appeals of his disqualification were rejected. (AR 21.) Ms. Horwitz' decision not to adopt the Representative Assembly's February 28, 2005, recommendation is well reasoned and is based on a careful consideration of the record. The

Court cannot conclude that this decision was arbitrary or capricious. Accordingly, the petition is **DENIED**.

Petitioners' motion for discovery (filed on January 11, 2010): This motion is **DENIED**. As stated above, the scope of this Court's review is narrow. Petitioners have not demonstrated that any of the discovery requests is calculated to lead to admissible evidence for the writ petition before the Court. There is no evidence that the petitioners propounded a request for discovery before bringing their motion for discovery. Additionally, the petitioners have unduly delayed in obtaining discovery. This action was filed on January 2, 2007. The petition for Writ of Mandate A has not changed substantially since the inception of this action. Some of the documents the petitioners seek to discover date back 17 years! There is no justification for the petitioners' delay in conducting discovery.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.